

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

ASHLEY KRUSE, <i>pro se</i> ,	)	Case No.: 3:06 CV 3079
	)	
Petitioner	)	
	)	
v.	)	JUDGE SOLOMON OLIVER, JR.
	)	
ERNIE L. MOORE, WARDEN,	)	
	)	
Respondent	)	<u>ORDER</u>

Pending before the court is Petitioner Ashley Kruse's ("Petitioner" or "Kruse") *pro se* Petition for a Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254. (ECF No. 1.) Kruse raises two grounds for relief in his Petition:

1. Insufficient Evidence: In a prosecution of an actual sale of drugs pursuant to R.C. 2925.03(A), the offense of trafficking is complete at the time that the drugs are transferred, irrespective of whether the transferor receives money in exchange for the drugs at the time that the transfer takes place.

2. The trial court erred to the prejudice of appellant by finding him guilty of aiding and abetting first degree trafficking. A conviction for complicity is proper only when the evidence establishes that a person acts as an aider and abettor rather than a principal offender.

(Pet. at 12.)

The case was referred to Magistrate Judge Kenneth S. McHargh ("Magistrate Judge") for the preparation of a Report and Recommendation ("R&R"). The Magistrate Judge issued his R&R on March 11, 2008. (ECF No. 15.) The Magistrate Judge recommended that the court deny Kruse's

Petition because Kruse failed to establish that the state court decision was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States.

As of the date of this Order, Plaintiff has not filed objections to the R&R. By failing to do so, Plaintiff has waived his right to appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Upon careful *de novo* review of the Magistrate Judge's R&R and all other relevant documents in the record, this court finds that the Magistrate Judge's conclusions are fully supported by the record and controlling case law. Accordingly, for the reasons stated by the Magistrate Judge, the court adopts as its own the Magistrate Judge's R&R.

Consequently, the court hereby denies Kruse's Petition, and final judgment is entered in favor of Respondent. The court further certifies that, pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

/s/ SOLOMON OLIVER, JR.  
UNITED STATES DISTRICT JUDGE

April 10, 2008